IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2584 OF 2015

Shaikh Sameer Abdul Rahaman
Age : 30 Years, Occu : Nil,
R/o Lakhmipura, A.P.T. Sangamner,
Dist. Ahmednagar. ... Appellant

Versus

1. Shaikh Asif Hasan,
Major, Occu : Business
R/o Naikwadpura, A.P.T. Sangamner,
Dist. Ahmednagar

2. The Divisional Manager,
New India Assurance Co. Ltd.
Zendgate, Ahmednagar ...Respondents

Mr. P.C. Mayure, Advocate for Appellant
Mr. V.R. Mundada, Advocate for Respondent No.2

CORAM : A.M. DHAVALE, J.

DATE : 24th JULY, 2018

ORAL JUDGMENT :

1. Heard.

2. The Appeal is admitted on following substantial questions of law.

(i) Whether the salary of the employee can be assumed at Rs.8,000/- as prescribed by amendment of 2010 or the upper ceiling limit of Rs.8,000/- is to be made applicable as per amended provision for the cases involving cause of action accrued earlier ?

(ii) Whether the Commissioner has discretion not to award future interest & penalty ?

3. By consent of the parties, appeal is taken up for final disposal at admission stage.

4. The claimant aggrieved by the smaller amount of compensation awarded by the Commissioner of Workmen's Compensation, Ahmednagar, has filed this appeal for enhancement of the amount and for grant of interest and penalty. It is not in dispute that the appellant was employed with respondent No.1 as a driver and was getting salary of Rs.5,000/- per month. On 30.03.2005, while he was driving his vehicle, he met with an accident and lost vision of his right eye. As per Employees' Compensation Act, Section 1-

A, respondent No.1 did not pay the compensation. Hence, the appellant issued notice dated 27.11.2006 and filed application for compensation. There was delay in preferring application. It was condoned and by judgment dated 23.11.2011 in W.C.A. No.20/2008, the Commissioner allowed the claim for compensation of Rs. 5,08,296/- as claimed, but in view of the delay in preferring the application, he refused to grant interest and penalty. Hence, this appeal for enhancement.

5. Learned advocate Shri. P.C. Mayure for the appellant argued following points :-

The appellant had, though, lost his right eye which is disability of 50 %, he is not in a position to drive the vehicle, and therefore, his financial disability is 100 %. He was drawing salary of Rs.5,000/- per month, but the Commissioner has considered granting of compensation only with presumption that his salary was Rs.4,000/- per month and compensation was granted only 60 % in view of the 50 % disability. It was not proper. He should have given 100% compensation on monthly wages multiplied by relevant factor assuming his salary of Rs.5,000/- per month. He further argued that there is amendment in 2010 for prescribing ceiling limit to the salary of Rs.8,000/-, and therefore, the compensation should have been granted on the whole salary of Rs.5,000/-.

6. He also argued that payment of his interest and penalty is statutory obligations and those could not have been denied to the appellant on account of delay.

7. Learned Advocate Shri. Mundada for the Insurance Company (Respondent No. 2) argued that the calculation of compensation is as per the provisions of law and as per the claim made by the appellant himself. He submitted that the accident took place on 30.03.2005 and the application for compensation was made on 26.09.2007. There was no intimation to the insurance company, otherwise, the insurance company would have paid the amount earlier. He also argued that the denial of payment of interest was justified in the facts of the case. He argued that in case of penalty, insurance company is not liable.

8. Both the learned advocates submitted citations which will be considered in due course.

9. There is no dispute that the appellant has lost sight of his one eye and due to this disability, he is not able to drive the vehicle. Schedule-I, Serial No. IV reads as follows :-

Sr.No.	Description	Percentage of loss of earning capacity
4	Loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential.	100

10. The accident took place in 2005. That time, section 4 (b) as applicable to the present case read as follows :-

(b) where permanent total disablement results from the injury	An amount equal to (sixty per cent) of the monthly wages of the injured (employee) multiplied by the relevant factor; or an amount of [**one lakh and forty thousand rupees**], whichever is more.

11. As per Government Notification dated 31.05.2010 Rs. 8,000/- (Eight Thousand) has been specified as monthly wages for the purpose of calculation of the compensation. He argued that the salary should be assumed at Rs. 8,000/-.

12. There is no dispute that the appellant was getting

salary of Rs.5,000/- per month. However, as per the explanation-II, there was a ceiling for consideration of salary to the extent of Rs.4,000/- only.

13. Learned advocate Shri. Mayure submitted that the said limit has been extended to Rs.8,000/- as per the Government Resolution dated 31.05.2010. In this regard, learned advocate shri.Mundada relied on the Judgment of ***Divisional Controller, MSRTC Vs. Prabhakar s/o Vithalrao Kulkarni, Died, Through L.Rs. 2016 ALL MR (Cri.) 5018.*** It is held in this case that even though, monthly wages of the claimant exceeds rupees 1000/- (limit existing that time) his monthly wages for the purpose of clause (a) and clause (b) determining amount of compensation shall be deemed to be Rs. 1000/- only. In ***United India Insurance Co. Ltd. Vs. Jagdish Madhukar Patil and Anr. 2017 (2) Mh.L.J. 470,*** wherein the Commissioner has considered the salary of Rs.6,000/- but this court reduced the figure of salary to the ceiling limit of Rs.4,000/-. He further relied on the Judgment of ***Smt. Shakuntala wd/o Mulchand Yadav Vs. Deputy Conservator of Forest & Anr. 2009 (5) Mh.LJ 628,*** it is

held'.

> "It is thus, clear that the three-Judge Full Bench of the Supreme Court in the case of Kerala State Electricity Board and another Versus Valsala K. and another, cited supra, in clear terms clarified the legal position that the relevant date for applying amendment would be the date of accident and consequently, the amendment made by Act No. 30 of 1995 w.e.f. 15.09.1995 cannot be made applicable to the claims arising out of the accident caused prior to 15.09.1995."

> (The similar view is also taken in the case of *Divisional Railway Manager Vs. Money & Ors. [III (2002) ACC 79 (Kerala High Court).*

14. I therefore, find no substance in the contention that in view of the subsequent amendment increasing ceiling of salary from Rs.4,000/- to Rs. 8,000/- in 2010, the appellant can claim any benefit thereof when he has met with an accident in 2005.

15. The contentions that the Commissioner should have granted 100% amount is also not tenable. Section 4 (b) itself lays down that 60% of the monthly wages can be considered and it is to be multiplied by relevant factor for calculation of compensation for permanent total disablement. Even when the percentage of disability is 100

%, the claimant is entitled for consideration of 60 % of Rs. 4000/- or salary which is less.

16. Thus, though the salary of the claimant was Rs.5,000/- on the date of accident as per the ceiling on salary, his salary could have been assumed at Rs.4,000/- and 60 % amount would come to Rs.2,400/-. This is to be multiplied by relevant factor.

17. It is not disputed that deceased was aged 28 years and the relevant factor was 211.79. On multiplying the part of the salary of Rs.2,400/- by this multiplier, the amount due would be Rs. 5,08,296/-. The same amount was claimed by the claimant in his application and same has been allowed. Therefore, I find no substance in the contentions that the amount of damages awarded by the Commissioner needs enhancement.

18. With regard to the claim for penalty and interest, Section 4-A reads as follows :-

> 4-A. Compensation to be paid when due and penalty for default -
> (1) Compensation under Section 4 shall be paid as soon as it falls due.
> (2) In cases where the employer does not accept the liability for compensation to the extent claimed,

he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the (employee), as the case may be, without prejudice to the right of the (employee) to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall,-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and

(b) If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty percent of such amount by way of penalty.

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

19. On bare reading of the section, it is clear that the payment of interest at the simple rate of 12% per annum is the statutory liability. The Commissioner is given discretion to go on higher side if the rate of scheduled bank is higher. Mr. Mayure, the learned advocate for the appellant relied on Jaya Biswal and Ors. Vs. Branch Manager IFFCO TOKIO General Insurance Company Ltd. and Anr.LEX (SC) 2016 2 9, wherein, it is observed in para 11 as under :-

The learned counsel further contends that the High Court patently erred in waiving off the 50 % penalty alongwith the 12 % interest payable by Respondent No.1 in case of default without assigning the cogent reason. The learned counsel places reliance on a Four Judge Bench decision of this Court in the case of Pratap Narain Singh Deo v. Srinivas Sabata, 1976 1 SCC 289 wherein this Court held that the amount of compensation is payable from the date of accident and not from the date of award. The same was reiterated by a Division Bench of this Court in the case of Oriental Insurance Company Ltd. v. Siby George & Ors. 2012 12 SCC 540 wherein after referring to several decisions of the Court, it was held that:

"In the light of the decisions in Pratak Narain Singh Deo and Valsala K., it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made."

20. Section 4-A indicates that it is not contemplated that the compensation can be paid only after the application is made. There is statutory liability of the employer to pay the compensation amount within one month from the date of accident as per the provisions of law. If he fails to make the payment as per statutory liability, he has to pay interest. It seems that delay in filing application for compensation when it is condoned, becomes irrelevant for determination for payment of interest. The provision does not give any discretion to the Commissioner to forfeit the right to get interest on the amount of compensation fixed. Therefore,

the order of forfeiture of the interest on account of delay by the Commissioner is not sustainable.

Section 4-A (b) lays down that if there is no justification for delay, the employer can be directed to pay sum not extending 50 % by way of penalty in addition to the amount of arrears and interest.

21. Mr. Mundada, the learned advocate relied on *Ved Prakash Garg Vs. Premi Devi and others AIR 1997 SC 3854,* wherein in para Nos. 14 and 19, it is observed that the liability to pay the penalty is on account of the default of the employer and the same liability cannot be fastened on the insurance company.

22. Mr. Mayure, the advocate for the appellant relied on the Judgment in *Kashibhai Rambhai Patel Vs. Shahabhai Somabhai Parmar & Ors. 2000 (4) ALL MR 592,* which lays down that though the liability to pay the penalty cannot be imposed on the insurance company, the liability to pay the interest could be burdened on insurance company.

23. I, therefore, find that the order declining to pay the penalty is also not sustainable. The employer had appeared

in the trial court and the application itself was notice for him. still, he has not paid the amount. Thus, there was deliberate delay on his part. No separate notice would be necessary for the same. Considering the delay in filing the application by the claimant/appellant, I award penalty of 30 % of the compensation amount. Hence, the Appeal deserves to be partly allowed. Thus, I answer formulated point No.1 in the negative and point No. 2 in the affirmative.

O R D E R

1. The Appeal is partly allowed.

2. The claim for enhancement of the compensation is rejected. However, respondent Nos. 1 and 2 are directed to pay the interest @ 12 % from the date of accident, till the date of payment of compensation. In addition, respondent No.1 shall pay penalty of 30 % on the compensation amount.

3. The Appeal is accordingly disposed of.

(**A.M.DHAVALE, J**)

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